IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2)(b)

Description of case

Date of decision: 11.09.2007

Writ Petition No. 6928 of 2001 (S/S)

(Old No. 12715 of 1990)

A.F.R. (Approved for Reporting)

Not approved for Reporting

(Initial of Judge)

Date: 11.09.2007

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 6928 of 2001 (S/S)

(Old No. 12715 of 1990)

Shri Hira Singh Bhandari,
S/o Late Shri L.S. Bhandari,
R/o A.N.K. Inter College, Gularbhoj.

……..Petitioner

Versus

(1) District Inspector of Schools,
Nainital
(2) Committee of Management, A.N.K.
Inter College, Gularbhoj, through its Manager.

……..Respondents

Sri Rajesh Joshi, learned counsel for the petitioner.
Sri N.P. Sah, learned Standing Counsel for respondent no. 1 and Sri Vijay Bhatt, learned counsel for respondent no.2

Hon'ble Prafulla C. Pant, J.

By means of this writ petition, the petitioner has sought writ in the nature of certiorari quashing the order dated 17.03.1990 (copy Annexure 7 to the writ petition), passed by respondent no. 1, wherein it is mentioned that the certificate of Madhyama (Visharad), issued by Hindi Sahitya Sammelan, is not equivalent to High School examination of U.P. Board. A mandamus has also been sought against respondents directing them not to interfere in the working of the petitioner as a Cleark in the College run by respondent no. 2, Committee of Management, A.N.K. Inter College, Gularbhoj, District Nainital (now Districts Udham Singh Nagar).

(2) Brief facts of the case, as narrated in the writ petition, are that A.N.K. Inter College, Gularbhoj, is a recognized institution, which imparts education up to XII standard. The said College is governed by the provisions of U.P. Intermediate Education Act, 1921. On 01.06.1976, petitioner was appointed as a Class IV employee in the College, as his educational qualification was up to VIII standard. Later on, he was promoted as Daftari w.e.f. 01.03.1978. Considering the services rendered by the petitioner, a Class IV employee of the College, it is alleged that after he passed matriculation he was entitled within the permissible quota to be promoted as Clerk. Petitioner through correspondence course, conducted by Hindi Sahitya Sammelan, Prayag, passed Prathma Examination in the year 1984 with subjects English, Hindi Sahitya, History, Geography and Mathematics in

second division. Thereafter, he passed Madhyama (Visharad) Examination in 1985 with English, Hindi Sahitya, History and Political Science. The said examination was also conducted by Hindi Sahitya Sammelan, Prayag. It is alleged that the certificates issued by said examination body are recognized by the Central Government. After the College was upgraded in the year 1986, up to XII standard, a post of Clerk fell vacant, against which the petitioner was promoted from the post of Class IV. His promotion order was sent for approval of District Inspector of Schools (respondent no.1), but vide impugned order, he refused to accord approval, on the ground that the certificates issued by Hindi Sahitya Sammelan, Prayag, are not equivalent to the High School examination. Challenging said communication, it is alleged in the writ petition that the order passed by respondent no.1 is illegal, as the certificates issued by aforesaid authority are recognized by the Central Government and also under the U.P. State Universities Act, 1973.

(3) A counter affidavit has been filed on behalf of respondent no. 1, in which it is stated that he certificate of examination of Madhyama (Visharad), issued by Hindi Sahitya Sammelan, Prayag, is not recognized by Education Department of Government of Uttar Pradesh. It is further alleged that no examination, held by Hindi Sahitya Sammelan, are in fact recognized by the Government of Uttar Pradesh. It is further stated in the counter affidavit that the petitioner did not fulfill the qualifications for promotion to the post of Clerk in the College, in which he was working

against Group D post. The College has no power to take work from the petitioner as Clerk without obtaining approval from answering respondent no.1.

(4) A rejoinder affidavit has been filed on behalf of petitioner, in which the averments made in the writ petition are reiterated. Certificates are also annexed with the rejoinder affidavit, in which the Principal of the College has stated that though no promotion is given to the petitioner, as no approval is received from District Inspector of schools, but since the post is lying vacant, the College is taking work of Clerk from the petitioner.

(5) A copy of letter dated 18.01.1981, issued by Ministry of Personnel, Government of India (Annexure 11 to writ petition) shows that Government of India ah recognized the examination conducted by Hindi Sahitya Sammelan, Allahabad, only for the purposes of standard of Hindi.

(6) Learned counsel for the petitioner drew attention of this Court to the principle of law laid down in ***Smt. Ayasha Arshad Vs. The Manager, Ram Dei Devi Kanya Higher Secondary School, Alinagar, Gorakhpur and others; 1980 U.P.L.B.E.C., Pg. 241,*** and argued that under Clause (d) of Regulation 9 of Chapter III of the Regulations framed under U.P. Intermediate Education act, 1921, certificate of Visharad has been recognized as equivalent for High School examination. I have gone through the said case law and also the Regulation 9, referred by learned counsel for the

petitioner. Regulation 9 does not pertain to the essential qualifications for promotion from the post of Class IV to Class III posts. Rather it provides that no teacher or Head of an institution will be confirmed in his appointment until he has passed the High School Examination with compulsory Hindi as one of his subjects, or an equivalent examination with Hindi (Regular not Elementary) of an examining body situated within a state where Hindi is the Regional language. In this reference the Visharad Examination with Hindi Literature conducted by Hindi Sahitya Sammelan, Allahabad, is recognized. But his Regulation clearly pertains to requirement of proficiency of Hindi with regard to the teachers and Head of the Institutions. It nowhere provides if such examination can be treated equivalent to the High School or Intermediate examination. Apart from this, in the aforementioned case (Ayasha Arshad's case (supra)) itself, it is mentioned that Prathma Examination conducted by Hindi Sahitya Sammelan is not one of the examinations, which is recognized by the Board of an equivalent examination.

(7) Chapter XIV of Regulations under U.P. Intermediate Education act, provides which of the examinations can be said to be equivalent to the High School examination for the purposes of entitling a person to appear in Intermediate Examination. Regulation 2 of said Chapter recognizes some 70 certificates issued by various Boards and Universities and examination bodies, but there is no mention of Hindi Sahitya Sammelan in said Rule, as such this Court has no hesitation

in holding that the certificates of Prathma and Madhyama (Visharad), issued by the Hindi Sahitya Sammelan, Prayag, are not recognized in the state of Uttar Pradesh and State of Uttarakhand as equivalent to High School examination or Intermediate examination.

(8) A division Bench of this Court in ***Shailendra Singh and others Vs. State of Uttaranchal and others; 2007 (1) Uttaranchal Decisions 155,*** has held that the degrees of 'Shiksha Visharad' issued by Hindi Sahitya Sammelan, Allahabad, are not recognized certificates equivalent to B.Ed. Examination. In ***Babu Ram and another Vs. Deputy Cane Commissioner, Moradabad and others; 2000 (1) Allahabad Weekly Cases 862,*** learned Single Judge of Allahabad High Court has held that certificate of Prathma issued by Hindi Sahitya Sammelan, Allahabad, is not equivalent to the certificate of High School. In said case, the Court upheld the reversion of petitioner from the post o Seasonal Clerk to the post of Parchi Vitrak (Slip Distributor), on detection that promotion was made treating certificate of Prathma equivalent to that of High School. A Division Bench of the same Court in ***Udai Veer Singh Yadav and others Vs. Union of India and others; 2003 (50) Allahabad Law Reports 575,*** again held in another case that on the basis of certificate issued by Hindi Sahitya Sameelan, Allahabad, a person has no right to practice as medial practitioner, after the certificates of Hindi Sahitya Sammelan, Allahabad were de-recognized in the year 1967. On the basis of aforementioned cases read with the case of ***State of Rajasthan Vs. Arun***

Lata; AIR 2002 Superme Court 2642, this Court has no hesitation in holding that certificates of Prathma and Madhyama issued by Hindi Sahitya Sammelan, Allahabad, are not equivalent to High School or Intermediate (XII standard) of U.P. Board. Learned counsel for the petitioner could not show me any Rule or Government Order, which recognizes certificate of Prathma and that of Madhyama as equivalent to matriculation or High School for the purpose of jobs under state Government or in the institution aided by State Government in the year when petitioner passed said examination. Annexure 1 to interim relief application is copy of Government Letter No. 342/Shiksha/98, dated 22.08.1998, which does show that after 1998, the Prathma and Madhyama Examination are recognized equivalent to High School and Intermediate Examination, as directed by Government of India.

(9) Lastly, on behalf of petitioner attention of this Court is drawn to the case of Hindi Sahitya Sammelan Vs. State of U.P. and others (Civil Appeal No. 1453 of 2004), decided by Apex Court on 25th May 2007, and it is pointed out that judgment of Allahabad High Court in Writ Petition No. 1546 (c) of 2003, dismissing the same, has been set aside. I have gone through said judgment. In said case petitioner Uma Kant Tiwari and 39 others sought certain reliefs with regard to the recognition of the examinations held by Hindi Sahitya Sameelan, Allahabad. What the Apex Court, while setting aside the order passed by the High Court, has said is that Hindi Sahitya Sameelan should have been heard before

dismissed the writ petition. From said observations, in said case, by the Apex Court, it cannot be said that the certificates issued by Hindi Sahitya Sammelan, are recognized. No certificates issued by Hindi Sahitya Sameelan, Allahabad, were recognized as equivalent to the High School for the purposes of seeking jobs under State Government or in the institutions aided by the state Government in the year, petitioner alleges to have passed Prathma.

(10) For the reasons as discussed above this writ petition has no force and it is liable to be dismissed. The same is dismissed. No order as to costs.

(Prafulla C. Pant, J.)

11.09.2007
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